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ABSTRACT

Even though a faculty member is employed on a basis other than tenure, there remains the expectation of continuing employment. Collective bargaining has not entirely removed the insecurity attached to nontenure positions, but under the conditions of a negotiated contract certain protections can be assured the faculty. Topics discussed in relation to these protections are: (1) notices; (2) prior criteria; (3) reasons for nonrenewal; (4) review; and (5) hearings. (Author/KE)

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Collective Bargaining Perspectives

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Job Security: The Issue of Non-Renewal[1]

by

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The terms non-renewal, non-reappointment and dismissal are inconsistently used, often interchangeably, in the same contract. Both non-renewal and non-reappointment mean the decision not to offer another appointment at the end of the current appointment period, which includes an automatic expiration date. No show of cause is required unless so stipulated in the contract.

Dismissal is the termination of a faculty member on a continuing appointment at the end of a normal academic period; or, the termination of any contractual arrangement prior to its expiration. In both cases, dismissal is with due process and for just cause. Dismissal conditions will be the next Perspectives topic.

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[1]Synthesized from Harold I. Goodwin and Edwin R. Smith. Encyclopedia of Collective Bargaining. Morgantown, West Virginia: The West Virginia University Bookstore, 1975.

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Even though a faculty member is employed on a basis other than tenure, there remains the expectation of continuing employment. Collective bargaining has not entirely removed the insecurity attached to non-tenured positions, but under the conditions of a negotiated contract certain protections can be assurred the faculty.

Notice. Explicit notification of intended non-renewal appears to be a ubiquitious contract characteristic, although among institutions the conditions vary extensively. In terms of time, five months is the norm, with the major variations one month on either side. The longer employed the longer the period of notice.

As an added protection, some institutions must give pre-written notice of intent not to renew. The additional time, a 15 day minimum, permits a conference with the Board of Trustees, if the individual so desires and makes a written request. In all cases there must be written notice, sometimes by registered mail.

Should proper notice not be given, the faculty member is automatically re-employed for one additional year, provided he informs the college of his intent to continue employment. Failure to give such notice terminates any further institutional obligation.

Prior criteria. ~~If~~ further contractual protection is the right to advanced knowledge of the criteria against which a renewal or non-renewal judgment will be made. To ensure the transmission of the criteria, a conference must be held between the new employee and his/her immediate supervisor.

At the time of a reappointment to a non-tenured position, or reasonably thereafter, an annual conference must be held to reconsider the added year's contractual stipulations, the basis for the subsequent assessment of the faculty performance.

Reasons. The pool of contracts speaks clearly on the security issue of reasons for non-renewal. There often is a clear statement that no reasons are to be given for non-renewal, in which case there is no security at all. Conversely, security is clearly enhanced when the intent to non-renew is a violation of academic freedom, or where it can be shown that the administrative action is arbitrary or capricious. Any tendency toward capriciousness is minimized when a contract stipulates that written reasons must be given, or that the Board of Trustees approve of any statement of reasons.

A statement of reasons may constitute a statement of deficiencies. As an added security, where such a set of deficiencies are stated, the employee must be given time to take appropriate corrective action and to have the intent not to renew the contract reconsidered. Additionally, deficiencies must be reasonably related to job expectations.

Review. Should a non-renewal statement be issued, a review committee may be formed on faculty request. In other instances the review is an automatic procedure triggered by the non-renewal notice. The strongest review procedure stipulates a guarantee that the review will proceed up the entire administrative ladder, ending in a hearing, if requested, with the Board of Trustees.

These procedures constitute a guard against inadequate consideration, discrimination or violation of academic freedom. Of course, any review committee's recommendation is just that, a recommendation carrying some degree of peer weight.

Hearings. The notice of non-renewal may cause the occurrance of a formal hearing. This provision enhances the review procedure because it guarantees, if requested, a platform for the employee to marshal and present whatever evidence he can muster to justify the withdrawal of the non-renewal notice.

It further enhances security when the employee is accompanied by counsel, a due process condition increasingly written into contracts.

We want to point out that it is the general condition in non-renewal contract articles that the various security protections require the individual to initiate those protections. While the union may be present at a hearing, for example, they appear to be without the authority to initiate the security device.

The signal variation, and that in a small number of cases, is that the notice of non-renewal may move directly to the grievance machinery. Here it is possible that the union may initiate the action, with or without the individual's consent, if the grievance procedure permits the union to do so. The conditions stated in one contract article becomes conditioned by the stipulations in another, often without prior realization. In this case, the grievance procedure may permit a non-renewal notice grieved even though that was not the intent of the non-renewal article.

The most recent enrollment figures indicate an overall growth in college enrollment. This would seem to alleviate the security issue, and to a degree it does. But the pattern shows a number of important enrollment shifts among the levels of institutions and within the several disciplines. While this form of adjustment continues, untenured faculty positions in particular will continue to be subjected to a high rate of change, and hence the continuation of the job security issue in collective bargaining.